

ESTTA Tracking number: **ESTTA1092197**

Filing date: **10/29/2020**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proceeding | 91237315 |
| Party | Defendant Universal Life Church Monastery Storehouse, Inc. |
| Correspondence Address | MICHAEL P MATESKY II MATESKY LAW PLLC 1001 4TH AVE SUITE 3200 SEATTLE, WA 98154 UNITED STATES Primary Email: trademarks@mateskylaw.com Secondary Email(s): mike@mateskylaw.com 206-701-0331 |
| Submission | Motion to Extend |
| Filer's Name | Michael P. Matesky, II/ |
| Filer's email | mike@mateskylaw.com, trademarks@mateskylaw.com, litigation@mateskylaw.com |
| Signature | /Michael P. Matesky, II/ |
| Date | 10/29/2020 |
| Attachments | Mot. re Extension, Strike, Serv. 102920.pdf(156591 bytes) Matesky Decl. & Exs. 102920.pdf(866349 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN MARRIAGE
MINISTRIES,

Opposer,

v.

UNIVERSAL LIFE CHURCH
MONASTERY STOREHOUSE,

Applicant.

Opposition No. 91237315

MOTION TO ORDER SERVICE OF
TESTIMONY DEPOSITIONS, STRIKE
OPPOSER'S NOTICE OF RELIANCE,
AND EXTEND APPLICANT'S TRIAL
PERIOD

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 2.122(g) and 2.125(b), Applicant Universal Life Church Monastery Storehouse ("Applicant") hereby moves the Board to **(1)** order Opposer to serve on Applicant copies of the transcripts and exhibits for all testimony depositions conducted by Applicant, **(2)** strike Opposer's Notice of Reliance and Exhibits A-B, I-K, and U-Z submitted therewith, and **(3)** extend Applicant's trial period.

Applicant is prejudiced in its ability defend against Opposer's claims because Opposer has failed to abide by Board rules governing submission of testimony and other evidence. First, Opposer has failed to timely serve copies of deposition transcripts and exhibits for testimony depositions taken during Opposer's trial period, as required by 37 C.F.R. § 2.125(b). Second, Opposer has filed a Notice of Reliance that **(a)** fails to sufficiently identify the alleged relevance of documents submitted therewith as required by 37 C.F.R. §§ 2.122(g), and **(b)** seeks to introduce evidence that is

inadmissible via Notice of Reliance under 37 C.F.R. §§ 2.122 and/or otherwise deficient under the Federal Rules of Evidence and Board precedent.

To remedy these violations, Applicant requests that the Board **(1)** order Opposer to serve on Applicant, within seven days, copies of transcripts and exhibits for all testimony depositions conducted by Opposer, **(2)** strike Opposer's Notice of Reliance and Exhibits A-B, I-K, and U-Z submitted therewith, and order that any amended notice of Reliance be filed and served within seven days and **(3)** reset Applicant's testimony period to close 60 days after issuance of the requested order.

II. RELEVANT BACKGROUND

By stipulation of the parties, Opposer's 30-day trial period ended on September 11, 2020. 38 TTABVUE 2. On September 4, 2020, Opposer took the testimony deposition of Dylan Wall. On September 9, 2020, Opposer took the testimony deposition of Dallas Goschie. On September 4, 2020, Opposer took the testimony deposition of Dylan Wall. On September 10, 2020, Opposer took the testimony deposition of Brian Wozeniak and Glen Yoshioka. On September 11, 2020, Opposer took the testimony deposition of George Freeman and Lewis King. Declaration of Michael P. Matesky, II submitted herewith ("Matesky Decl.") ¶¶ 4-7.

On September 9, 2020, Opposer filed its Notice of Reliance, documents identified as Exhibits A – C, and documents identified as part of Exhibit D. 39 TTABUE 1 – 41 TTABVUE 46. On September 10, 2020, Opposer filed documents identified as the remainder of Exhibit D and Exhibits E – T to its Notice of Reliance. *See* 43 TTABVUE 1-447. Opposer indicated that Exhibit I was "[a]

copy of Opposer's Motion for Partial Summary Judgment with Exhibits" and would be filed under seal. *See* 39 TTABVUE 5, 42 TTABVUE.

However, Opposer never served a copy of that Exhibit I on Applicant. Matesky Decl. ¶ 9. Rather, Opposer served a document identified as Exhibit I comprising Applicant's Motion for Partial Judgment on the Pleadings and two copies of the October 18, 2017 Declaration of Nancy Stephens and exhibits thereto (i.e., not the documents described in Opposer's Notice of Reliance). *Id.* On September 14, 2020, Applicant's counsel informed Opposer's counsel that the "Exhibit I" that was served did not match the description of Exhibit I from Opposer's Notice of Reliance. *Id.* ¶ 10, Ex. A at 2. Opposer's counsel responded by copying the description of Exhibit I from Opposer's Notice of Reliance, but did not address the discrepancy. *Id.* Ex. A at 1.

On September 25, 2020, Opposer filed a "Notice of Errata" that identified several errors related to its Notice of Reliance, and submitted numerous additional documents and pages that were not submitted with Opposer's Notice of Reliance during Opposer's trial period. *See* 44 TTABVUE 1-194. Opposer included within this new submission a new Exhibit I consisting of pages and documents that Opposer had neither served nor filed during its trial period. *See* 44 TTABVUE 3 ¶ 5, 45 TTABVUE, Matesky Decl. ¶¶ 9, 11. Opposer did not serve this new Exhibit I on Applicant. To this day, Opposer has not served the new Exhibit I, apparently filed under seal as 45 TTABVUE, on Applicant. Matesky Decl. ¶ 11.

On October 1, 2020, Opposer sent Applicant copies of the transcripts of the testimony depositions of Mr. Freeman, Mr. Goschie, and Mr. Wozeniak. *Id.* ¶ 12. However, Opposer did not send Applicant copies of the exhibits from the court reporter for these depositions. *Id.* Opposer has

not provided Applicant with copies of the transcripts or exhibits from the testimony depositions of Mr. Wall, Mr. Yoshioka, or Mr. King. *Id.* ¶ 13.

III. ARGUMENT

A. The Board Should Order Opposer to Serve Deposition Transcripts

The Board should order Opposer to serve on Applicant copies of the transcripts and exhibits from each testimony deposition conducted during Opposer’s trial period. A party taking a testimony deposition must serve a copy of the transcript of such deposition, along with exhibits thereto, within thirty days after completion of the deposition. *See* 37 C.F.R. § 2.125(b). In this case, Opposer took six testimony depositions between September 4 – 11. Thus, Opposer should have served copies of the transcripts and exhibits from each such deposition by October 12, 2020. Opposer did provide transcripts for the Freeman, Goschie, and Wozeniak depositions, but has not provided copies of the exhibits from such depositions. Moreover, Opposer has not provided copies of transcripts or exhibits from the Wall, Yoshioka, or King depositions. Matesky Decl. *Id.* ¶¶ 12-13.

In this scenario, 37 C.F.R. § 2.125(b) provides that an adverse party may move “to reset such adverse party’s testimony and/or briefing periods, as may be appropriate. If the deposing party fails to serve a copy of the transcript with exhibits on an adverse party after having been ordered to do so by the Board, the Board, in its discretion, may strike the deposition, or enter judgment as by default against the deposing party, or take any such other action as may be deemed appropriate.” Thus, as prescribed by Section 2.125(b), Applicant hereby moves the Board to **(1)** order Opposer to serve a copy of the transcript of each testimony deposition taken during Opposer’s trial period, along with

exhibits thereto, within seven days, and (2) reset Applicant's trial period to close within 60 days of ruling on Applicant's motion.

B. The Board Should Strike or Disregard Opposer's Notice of Reliance

The Board should strike or disregard Opposer's Notice of Reliance because (1) Opposer fails to adequately identify the relevance of materials submitted with its Notice of Reliance, and (2) Opposer seeks to introduce materials via its Notice of Reliance that cannot be introduced via a Notice of Reliance and/or are otherwise inadmissible.

1. Opposer Fails to Identify Relevance of Materials

The Board should strike Opposer's Notice of Reliance and documents attached thereto because Opposer fails to identify the relevance of such materials to disputed issues and claims in this proceeding. A party seeking to introduce documents via a Notice of Reliance must associate the materials with a particular element of a claim or relevant fact. *See* 37 CFR § 2.122(g). To comply with this requirement, a party must identify a specific factor or fact relevant to a specific and pleaded claim or defense. *Barclays Capital Inc. v. Tiger Lily Ventures Ltd.*, 124 USPQ2d 1160, 1164 (TTAB 2017). Where evidence consists of multiple documents or numerous pages, the party seeking to introduce such evidence must identify which portions are relevant to which specific factors or disputed factual issues related to a claim or defense. *Id.* (citing *FUJIFILM SonoSite, Inc. v. Sonoscape Co.*, 111 USPQ2d 1234, 1236 (TTAB 2014)); *see also* TBMP § 704.02 (“[I]f the same document is submitted to support more than one element of a claim or defense, the propounding party should indicate the specific element or fact supported by the document in a group of documents.”). A description that is “so general as to be meaningless” is insufficient. *See Barclays*,

124 USPQ2d at 1164. Yet, Opposer’s Notice of Reliance is “so general as to be meaningless” in at least two ways. First, Opposer fails to associate specific portions of its multi-document, multi-page exhibits with specific issues in this case. Second, Opposer associates its materials with a laundry list of issues that have no plausible or explained relevance to claims or defenses at issue in this case.

Paragraph A, describing Exhibit A to Opposer’s Notice of Reliance, is instructive. Opposer describes Exhibit A as “the full trademark record”—multiple documents and 41 pages—for Applicant’s GET ORDAINED application. 39 TTABVUE 2, 15-56. Opposer claims these documents are relevant to a laundry list of twelve separate issues, but does not explain which documents or pages are supposedly relevant to which issues, nor which issues are relevant to which claims or defenses. *Id.* at 2 ¶ A.

Opposer’s Notice of Reliance similarly fails to identify which documents or pages are supposedly relevant to which disputed issues for Exhibit B (multiple documents comprising the complete registration file history for a non-pleaded registration owned by Opposer), *Id.* at 2-3 ¶ B, 57-101, Exhibit D (over 200 pages of printouts of numerous different websites), Exhibit F (25 pages of printouts from multiple websites), *Id.* at 3 ¶ D, 40 TTABVUE 5-50, 41 TTABVUE 1-46, Exhibit G (Opposer’s 27 interrogatories and Applicant’s responses thereto), 39 TTABVUE 4 ¶ G, 43 TTABVUE 147-71, Exhibit I (Opposer’s Motion for Partial Summary Judgment, multiple declarations in support thereof, and multiple documents attached as exhibits thereto, comprising 100+ pages), 39 TTABVUE 6 ¶ I,¹ and Exhibit K (the declaration of Dylan Wall and 20 separate exhibits thereto, comprising 150+ pages), 39 TTABVUE 7 ¶ K, 43 TTABVUE 247-399.

¹ As noted previously, Opposer has not served Applicant with a copy of Exhibit I as described in its Notice of Reliance. The “Exhibit I” served on Applicant comprised over 100 pages. Matesky Decl. ¶¶ 9, 11.

By failing to identify which documents or pages are supposedly relevant to which of the many issues identified by Opposer, Opposer has failed to meet its obligations. *See Barclays Capital*, 124 USPQ2D at 1164 (“If the propounding party introduces a group of documents to support more than one element of a claim or defense, or more than one relevant fact, it should indicate the specific element or fact supported by each document in the group.”); *FUJIFILM*, 111 USPQ2D at 1236 (“The Board will not expend its resources guessing which pages the propounding party is relying upon, particularly when an exhibit comprises such a large number of pages. [The propounding party must indicate] which web page or group of web pages within each exhibit support each specific du Pont factor.”).

Opposer’s failure to link specific documents or pages with specific issues is compounded by Opposer’s identification of multiple “issues” that have no conceivable bearing on this case, without explanation. For example, Opposer says Exhibit A is “associated with...Applicant’s fraud on the USPTO.” 39 TTABVUE 2 ¶ A. Yet, Opposer’s claim for fraud was dismissed without leave to amend on August 14, 2018—over two years ago!² 13 TTABVUE 5. Opposer also claims that Exhibit A is associated with “damage to Opposer.” 39 TTABVUE 2 ¶ A. Not only is “damage to Opposer” so vague as to be meaningless, but “damages” are not an issue to be determined in *inter partes* proceedings before the Board.³ *See General Mills Inc. v. Fage Dairy Processing Indus. SA*, 100 USPQ2d 1584, 1591 (TTAB 2011) (no authority to determine damages), *judgment set aside on*

2 Opposer also claims Exhibits A, D, F-I, and L-Z are associated with Opposer’s non-existent “fraud” claim. 39 TTABVUE 2-10. Even if fraud were still an active claim in this proceeding, Opposer’s Notice of Reliance would be insufficient because it does not identify the relevance of the materials to any specific element or factual issues related to a fraud claim. *See Safer, Inc. v. OMS Invs., Inc.*, 94 U.S.P.Q.2d 1031, 1039 (TTAB 2010) (“[I]t is not sufficient for the propounding party to broadly state that the materials are being submitted to support the claim that there is (or is not) a likelihood of confusion”).

3 Opposer associates every one of its exhibits—A through Z—with “damage to Opposer.” 39 TTABVUE 2-12.

other grounds, 110 USPQ2d 1679 (TTAB 2014) (non-precedential); *see also* TBMP § 502.05 (“The Board will not...award...damages to any party.”).

It is unclear which actual claims or defenses—if any—bear any relation to the other issues identified by Opposer. For example, Opposer claims Exhibit A is associated with “Applicant’s manner of use,” but does not clarify how such “manner of use” relates to any applicable claim or defense in this case.⁴ 39 TTABVUE 2. Opposer claims Exhibit B constitutes “evidence of the status of Opposer’s registration.” *Id.* But Opposer does not explain how the status of Opposer’s non-pleaded registration relates to any claim or defense in this proceeding. *See id.* at 2-3.

In short, Opposer has littered its Notice of Reliance with references to non-existent claims and vaguely-described issues that bear no obvious (or explained) relation to the actual claims or defenses in this proceeding. This renders Opposer’s relevancy descriptions effectively meaningless and violates 37 CFR § 2.122(g). This also makes it impossible for Applicant to ascertain whether such materials are admissible for the purpose(s) for which Opposer intends to use such materials. Accordingly, the Board should strike Opposer’s Notice of Reliance and materials submitted therewith.

2. Opposer Cannot Introduce Exhibits I-K and U-Z by a Notice of Reliance

The Board should strike Exhibits I-K and U-Z to Opposer’s Notice of Reliance, because Board rules do not allow their introduction via Notice of Reliance. Exhibits I-K are identified as Opposer’s Motion for Partial Summary Judgment, Reply in support thereof, and declarations and

⁴ Opposer also associates Exhibits A, G-H, and X-Z with “Applicant’s manner of use,” without explaining the relevance of such “manner of use” to any claim or defense. 39 TTABVUE 2, 5-6, 11-12.

exhibits submitted in support thereof. 39 TTABVUE 6-7 ¶¶ I-K.⁵ Exhibits U-Z are identified as testimony depositions.⁶ *Id.* at 10-12 ¶¶ U-Z. “The types of evidence admissible by notice of reliance are identified in paragraphs (d)(2) and (e)(1) and (2) of this section and § 2.120(k).” 37 CFR 2.122(g). None of these CFR sections allow introduction of briefs, declarations or exhibits in support thereof, or testimony depositions, via a Notice of Reliance. *See also Sports Authority Michigan Inc. v. PC Authority Inc.*, 63 USPQ2d 1782, 1786 n.4 (TTAB 2002) (testimony depositions are not filed by notice of reliance but instead are filed under cover of notice of filing which must also be served on each adverse party); *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1233 (TTAB 1992) (motion to strike granted where materials were not admissible via a notice of reliance and opposer failed to explain relevance of materials).

Moreover, with regard to Exhibits I and J, the assertions and arguments set forth in Opposer’s briefs are not “evidence” of anything. *See Zheng Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1371, 127 U.S.P.Q.2d 1797, (Fed. Cir. 2018) (“[I]nformation [in a brief] is not evidence under any of the relevant rules.”); *see also Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005) (“Attorney argument is no substitute for evidence.”). With regard to the Stephens and Wall declarations, and exhibits thereto, in Exhibits I and K, Ms. Stephens was not identified as a witness in Opposer’s pre-trial disclosures, and Opposer stated that Mr. Wall would be providing trial testimony by oral deposition, not by testimony declaration. Matesky Decl. ¶¶ 14-15, Ex. B. He, in fact, did so, and was subject to cross-examination at that time. *Id.* Additionally, the

⁵ As discussed above, the “Exhibit I” served on Applicant does not meet this description, and Opposer has not served Applicant a copy of the new “Exhibit I” purportedly filed under seal after the close of Opposer’s trial period. Matesky Decl. ¶¶ 9-11.

Board has already stricken or disregarded much of the testimony and the exhibits attached to the Stephens and Wall declarations in its prior order denying Opposer's Motion for Partial Summary Judgment. *See* 36 TTABVUE 6-7. Thus, Opposer requests that the Board strike or disregard Exhibits I – K to Opposer's Notice of Reliance.

3. Opposer Failed to Authenticate Exhibit B

The Board should strike Exhibit B to Opposer's Notice of Reliance because Opposer failed to identify the source and date of publication as required by 37 CFR § 2.122(e)(1). Opposer identifies Exhibit B as "A true and correct copy of the full trademark record on file with the USPTO for the trademark AMERICAN MARRIAGE MINISTRY, Registration No. 4887624 in the name of American Marriage Ministries." The only provision under which these documents could potentially be introduced would be 37 CFR § 2.122(e), covering official records and printed publications. However, to do so, Opposer's Notice of Reliance must "specify the printed publication (including information sufficient to identify the source and the date of the publication) or the official record and the pages to be read; and be accompanied by the official record or a copy thereof whose authenticity is established under the Federal Rules of Evidence, or by the printed publication or a copy of the relevant portion thereof." Opposer has neither "include[ed] information sufficient to identify the source and date of the publication" or "the pages to be read," nor authenticated Exhibit B under the Federal Rules of Evidence. Accordingly, the Board should strike or disregard Exhibit B.

6 Although Opposer claimed that it would file copies of the identified testimony depositions "once available," 39 TTABVUE 10-12 ¶¶ U-Z, Opposer has not filed any testimony deposition transcripts or exhibits thereto, and has not served the transcripts or exhibits discussed in Section III(A), *supra*.

4. Exhibit C is Deceptively Incomplete

The Board should strike Exhibit C to Opposer's Notice of Reliance because it is incomplete. Opposer identifies Exhibit C as "A true and correct copy of the Merriam Webster Online dictionary definitions of 'get' and 'ordained.'" However, the single page Opposer identifies as the definition of the word "get" is cut off, and does not show the entire definition. *Compare* 40 TTABVue 3, with Matesky Decl. ¶ 16 Ex. C. This is not a mere technical deficiency, as the potential for multiple understandings of a word is relevant to the issue of genericness. *See Playtex Prods., Inc. v. Georgia-Pacific Corp.*, 390 F.3d 158, 164 (2d. Cir. 2004) (a term that "could plausibly describe a wide variety of products" is suggestive, not descriptive, in a trademark sense) (Sotomayor, J.). Accordingly, Exhibit C should be stricken or disregarded. *See Hard Rock Cafe Licensing Corp. v. Elsea*, 48 U.S.P.Q.2d 1400, 1405 (TTAB 1998) (sustaining objection to printed publications that were incomplete or illegible); TBMP § 704.08(a) & (b) ("The submitting party must also ensure that such evidence is complete."); Fed. R. Civ. 106 ("If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other...that in fairness ought to be considered at the same time.")

Accordingly, the Board should strike Opposer's Notice of Reliance and Exhibits A-B, I-K, and U-Z thereto, and order that any amended Notice of Reliance be filed within seven days.

IV. CONCLUSION

For the reasons set forth above, Applicant requests that the Board (1) order Opposer to serve on Applicant, within seven days, copies of transcripts and exhibits for all testimony depositions

conducted during Opposer's trial period, **(2)** strike Opposer's Notice of Reliance and Exhibits A-B, I-K, and U-Z submitted therewith, and order that any amended Notice of Reliance be filed and served within seven days and **(3)** reset Applicant's testimony period to close 60 days after issuance of the requested order.

DATED: October 29, 2020

Respectfully submitted:

MATESKY LAW^{PLLC}

s/ Michael P. Matesky, II/

Michael P. Matesky, II
(Washington Bar No. 39586)
4500 9th Ave. NE, Suite 300
Seattle, WA 98105
Ph: 206.701.0331
Fax: 206.702.0332
Email: mike@mateskylaw.com;
litigation@mateskylaw.com

Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing on Opposer's counsel of record by email transmission to nancy.stephens@foster.com, pursuant to Trademark Rule § 2.119(b), 37 C.F.R. § 2.119(b).

Dated: October 29, 2020

s/ Michael P. Matesky, II
Michael P. Matesky, II

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN MARRIAGE
MINISTRIES,

Opposer,

v.

UNIVERSAL LIFE CHURCH
MONASTERY STOREHOUSE,

Applicant.

Opposition No. 91237315

DECLARATION OF MICHAEL P.
MATESKY, II

I, Michael P. Matesky, II, declare as follows:

1. I am and at all relevant times have been counsel for Applicant in this matter.
2. I am over the age of eighteen years and otherwise competent to testify in this matter.
3. I make this declaration based on my personal knowledge.
4. On September 4, 2020, Opposer took the testimony deposition of Dylan Wall in this proceeding.
5. On September 9, 2020, Opposer took the testimony deposition of Dallas Goschie in this proceeding.
6. On September 10, 2020, Opposer took the testimony deposition of Brian Wozeniak and Glen Yoshioka in this proceeding.
7. On September 11, 2020, Opposer took the testimony deposition of George Freeman and Lewis King in this proceeding.

8. On September 9, 2020, Opposer sent me a copy of Opposer's Notice of Reliance.

9. On September 10, 2020, Opposer sent me copies of documents identified as Exhibits to Opposer's Notice of Reliance, including a document identified as Exhibit I. The "Exhibit I" that Opposer sent me comprised Applicant's Motion for Partial Judgment on the Pleadings and two apparently-identical copies of the October 18, 2017 Declaration of Nancy Stephens and multiple exhibits thereto. The "Exhibit I" that Opposer sent me comprised over 100 pages. The "Exhibit I" that Opposer sent me did not include "Opposer's Motion for Partial Summary Judgment with Exhibits."

10. On September 14, 2020, I emailed Opposer's counsel to identify the apparent discrepancy between the "Exhibit I" that was sent to me and the description of Exhibit I in Opposer's Notice of Reliance. Opposer's counsel responded, but did not address this discrepancy. A true and correct copy of this correspondence is attached hereto as Exhibit A.

11. Opposer has not provided any updated copy of "Exhibit I" to me, and has not provided any copy of the document(s) filed under seal and identified as document number 45 ("CONFIDENTIAL -P EXHIBITS") on the TTABVUE system for this proceeding.

12. On October 1, 2020, Opposer's counsel sent me copies of transcripts from the testimony depositions of George Freeman, Dallas Goschie, and Brian Wozeniak for this proceeding, as prepared by the court reporter for those depositions. However, Opposer has not provided copies of the exhibits from those depositions as marked and prepared by the court reporter.

13. Opposer has not provided me with copies of transcripts or exhibits prepared by the court reporter from the testimony depositions of Dylan Wall, Glenn Yoshioka, or Lewis King.

14. At no point, in its pre-trial disclosures or otherwise, did Opposer identify its counsel, Nancy Stephens, as a potential testimony witness.

15. On September 1, 2020, Opposer gave me notice that it would take the oral testimony deposition of Dylan Wall on September 4, 2020. A true and correct copy of the Notice of Examination of Dylan Wall is attached hereto as Exhibit B. Mr. Wall was orally deposed and subject to oral cross examination during his September 4th deposition. At no point did Opposer give notice that it would submit testimony from Mr. Wall by written declaration.

16. Attached hereto as Exhibit C is a true and correct printout of the definition of the word “get” obtained from the www.Merriam-Webster.com website on October 29, 2020.

DATED: October 29, 2020 at Seattle, Washington

s/ Michael P. Matesky, II/

Michael P. Matesky, II

EXHIBIT A

Mike Matesky

From: Mike Matesky
Sent: Tuesday, September 15, 2020 1:25 PM
To: Nancy Stephens; Ruth Ann Van Steen
Cc: Renee Stewart; Kelly Mennemeier; 'Michael Galletch'
Subject: RE: GET ORDAINED Opposition No. 91237315 - Email 2A
Attachments: Exhibit I.pdf

Just to clarify, attached is the Exhibit I that I received.

Mike

Mike Matesky
Matesky Law PLLC
4500 9th Ave. NE, Suite 300
Seattle, WA 98105
(Please Note New Street/Mailing Address Above)
Ph: 206.701.0331
Fax: 206.701.0332
mike@mateskylaw.com
www.mateskylaw.com



This message and any attachments may contain PRIVILEGED and CONFIDENTIAL material intended solely for the indicated recipient. If you believe you have received this e-mail in error, please advise the sender, permanently delete the message and all attachments, and refrain from copying, using, or disclosing the contents. Thank you.

From: Nancy Stephens [mailto:nancy.stephens@foster.com]
Sent: Monday, September 14, 2020 7:14 PM
To: Mike Matesky <mike@mateskylaw.com>; Ruth Ann Van Steen <ruthann.vansteen@foster.com>
Cc: Renee Stewart <renee.stewart@foster.com>; Kelly Mennemeier <kelly.mennemeier@foster.com>; 'Michael Galletch' <mike@psbizlit.com>
Subject: RE: GET ORDAINED Opposition No. 91237315 - Email 2A

Mike: The description of Exhibit I is below. The documents are the same docs filed with the TTAB on 2/28/2019. (Bates 000111 – 000742). It was filed under Seal the first time so we retained the confidentiality. Let me know if there are further questions. Thank you. Nancy

A copy of Opposer's Motion for Partial Summary Judgment with Exhibits filed on February 28, 2019 with the USPTO Trademark Trial and Appeal Board. Documents originally filed under seal are again filed under seal.

Nancy V. Stephens

Principal

Foster Garvey PC

Tel: 206.447.8925 • Cell: 206.412.4121

nancy.stephens@foster.com

From: Mike Matesky [<mailto:mike@mateskylaw.com>]

Sent: Monday, September 14, 2020 4:47 PM

To: Ruth Ann Van Steen

Cc: Renee Stewart; Nancy Stephens; Kelly Mennemeier; 'Michael Galletch'

Subject: RE: GET ORDAINED Opposition No. 91237315 - Email 2A

Dear Counsel,

The Exhibit I that was sent to me does not contain the motion identified as Exhibit I in AMM's Notice of Reliance. Could you please confirm what was actually filed as Exhibit I (TTABVUE document number 42) with the Board?

Sincerely,

Mike

Mike Matesky

Matesky Law PLLC

4500 9th Ave. NE, Suite 300

Seattle, WA 98105

(Please Note New Street/Mailing Address Above)

Ph: 206.701.0331

Fax: 206.701.0332

mike@mateskylaw.com

www.mateskylaw.com



This message and any attachments may contain PRIVILEGED and CONFIDENTIAL material intended solely for the indicated recipient. If you believe you have received this e-mail in error, please advise the sender, permanently delete the message and all attachments, and refrain from copying, using, or disclosing the contents. Thank you.

From: Ruth Ann Van Steen [<mailto:ruthann.vansteen@foster.com>]

Sent: Thursday, September 10, 2020 2:35 PM

To: 'mike@psbizlit.com' <mike@psbizlit.com>; Trademarks <trademarks@mateskylaw.com>; Mike Matesky <mike@mateskylaw.com>

Cc: Renee Stewart <renee.stewart@foster.com>

Subject: GET ORDAINED Opposition No. 91237315 - Email 2A

Ruth Ann Van Steen

Legal Practice Assistant

Tel: 206.447.8953
Cell: 253.208.4082
ruthann.vansteen@foster.com

Foster Garvey PC
1111 Third Avenue, Suite 3000
Seattle, WA 98101
foster.com

SEATTLE ▪ PORTLAND ▪ NEW YORK ▪ WASHINGTON, D.C. ▪ SPOKANE ▪ BEIJING

This e-mail is for the sole use of the intended recipient(s). It contains information that is confidential and/or legally privileged. If you believe that it has been sent to you in error, please notify the sender by reply e-mail and delete the message. Any disclosure, copying, distribution or use of this information by someone other than the intended recipient is prohibited.

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|-------------------------------|---|--------------------------|
| AMERICAN MARRIAGE MINISTRIES, |) | Opposition No. 91237315 |
| |) | |
| Opposer, |) | Marks: GET ORDAINED |
| |) | Application No. 87430729 |
| v. |) | |
| |) | |
| UNIVERSAL LIFE CHURCH |) | |
| MONASTERY STOREHOUSE, INC. |) | |
| |) | Filed: October 18, 2017 |
| Applicant. |) | |
| |) | |

NOTICE OF EXAMINATION OF DYLAN WALL

PLEASE TAKE NOTICE that, in accordance with 37 CFR § 2.123 and Fed. R. Civ. P. 30, Opposer American Marriage Ministries (“Opposer”) will take the testimony deposition of Dylan Wall, commencing at 9:00 AM on September 4, 2020, remotely via videoconference. The testimony shall be recorded by stenographic and/or audiovisual means by a notary public or other officer authorized to administer oaths. The deposition will be taken for the purposes of obtaining trial testimony and for any other purpose permitted under the Federal Rules of Civil Procedure and the rules of the Board. The deposition will continue until completed as provided in the Federal Rules of Civil Procedure. You are invited to attend and cross-examine.

Dated: September 1, 2020.

/Nancy V. Stephens/
Nancy V. Stephens WSBA No. 31510
Benjamin Hodges, WSBA No. 49301
Kelly Mennemeier, WSBA No. 51838
Foster Garvey PC
Attorneys for Opposer
1111 Third Avenue, Suite 3000
Seattle, WA 98101-3299
206-447-4400

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2020, I served the foregoing NOTICE OF EXAMINATION OF DYLAN WALL on the Applicant by emailing to Applicant as follows:

Michael P. Matesky, II
Matesky Law PLLC
trademarks@mateskylaw.com
mike@mateskylaw.com

/Renee Stewart/
Renee Stewart

EXHIBIT C



SINCE 1828

- [GAMES](#)
- [BROWSE THESAURUS](#)
- [WORD OF THE DAY](#)
- [WORDS AT PLAY](#)

- [LOG IN](#)
- [REGISTER](#)
-



[settings](#)

-  [SAVED WORDS](#)

get



dictionary thesaurus [view recents](#)

[Login](#) or [Register](#)

Hello,

- [GAMES](#)
- [BROWSE THESAURUS](#)
- [WORD OF THE DAY](#)
- [WORDS AT PLAY](#)
- [SETTINGS](#)
-

-  [SAVED WORDS](#) [view recents](#)

get



[verb](#)

 [Save Word](#)

To save this word, you'll need to log in.

[Log In](#) ☐

\ 'get , nonstandard 'git 

got\ 'gät ; got or gotten\ 'gä-tən ; getting

Definition of *get*

(Entry 1 of 3)

[transitive verb](#)

1a : to gain possession of *got* a new bicycle

b : to receive as a return : [earn](#) he *got* a bad reputation for carelessness

2a : to obtain by concession or entreaty get your mother's permission to go

b : to become affected by (a disease or bodily condition) : [catch](#) *got* measles from his sister

3a : to seek out and obtain hoped to get dinner at the inn

b : to obtain and bring where wanted or needed get a pencil from the desk

4 : [beget](#)

5a : to cause to come or go quickly *got* his luggage through customs

b : to cause to move get it out of the house

c : to cause to be in a certain position or condition *got* his feet wet

d : to make ready : [prepare](#) get breakfast

6a : to be subjected to *got* a bad fall

b : to receive by way of punishment

c : to suffer a specified injury to *got* my nose broken

7a : to achieve as a result of military activity

b : to obtain or receive by way of benefit or advantage he *got* little for his trouble get the better of an enemy

8a : [seize](#) The dog *got* the thief by the leg.

b : [overcome](#) Such practices will surely get you in the end.

c : to have an emotional effect on the final scene always gets me

d : [irritate](#) the delays were starting to get her

e : [puzzle](#) This problem really gets me.

f : to take vengeance on specifically : [kill](#)

g : [hit](#)

9 : to prevail on : [cause](#) finally *got* them to tidy up their room

10a : [have](#) —used in the present perfect tense form with present meaning I've *got* no money

b : to have as an obligation or necessity —used in the present perfect tense form with present meaning you have *got* to come
11a : to find out by calculation get the answer to a problem
b : [memorize](#) *got* the verse by heart
c : [hear](#) Sorry, but I didn't get your name.
d : [understand](#) he *got* the joke
12 : to establish communication with
13 : to put out in baseball
14 : [deliver sense 6b](#) the car gets 20 miles to the gallon

[intransitive verb](#)

1a : to succeed in coming or going : to bring or move oneself get away to the country *got* into the car
b : to reach or enter into a certain condition *got* to sleep after midnight
c : to make progress hasn't *gotten* far with the essay
2 : to acquire wealth
3a : to be able never *got* to go to college
b : to come to be —often used with following present participle *got* talking about old times
4a : to succeed in becoming : [become](#) how to get clear of all the debts I owe— William Shakespeare
b : to become involved people who get into trouble with the law
5 : to leave immediately told them to get

[auxiliary verb](#)

—used with the past participle of transitive verbs as a passive voice auxiliary they *got* caught in the act
get after
: to pursue with exhortation, reprimand, or attack The coach really *got after* the players at halftime.
get ahead
: to achieve success determined to *get ahead* in life
get a life
: to stop wasting time on trivial or hopeless matters
get a move on
: [hurry](#)
get at
1 : to reach effectively The valve is hard to *get at* unless you have a special tool.
2 : to influence corruptly : [bribe](#)
3 : to turn one's attention to The committee finally *got at* the main issue.
4 : to try to prove or make clear I don't understand what he's *getting at*.
get away with
: to avoid criticism or punishment for or the consequences of (such as a reprehensible act)
get cracking
: to make a start : get going ought to *get cracking* on that assignment
get even
: to get revenge
get even with
: to repay in kind

get going

: to make a start time to *get going* on that assignment

get into

: to become strongly involved with or deeply interested in *got into* gymnastics at an early age

get it

: to receive a scolding or punishment

get it on

1 : to become enthusiastic, energetic, or excited

2 : to engage in sexual intercourse

get on

1 : to produce an unfortunate effect on : [upset](#) the noise *got on* my nerves

2 : to criticize insistently the fans *got on* him for losing the game

get one's act together

1 : to put one's life, thoughts, or emotions in order : cease to be confused or misdirected

2 : to begin to function in a skillful or efficient manner the company finally *got its act together*

get one's goat

: to make one angry or annoyed

get over

1a : [overcome](#), [surmount](#) *get over* your fear of being lied to

b : to recover from still trying to *get over* a bad cold

c : to reconcile oneself to : become accustomed to was very disappointed, but he'll *get over* it

2 : to move or travel across

get real

: to stop deceiving oneself or fooling around : face reality

get religion

1 : to undergo religious conversion

2 : to turn to or adopt an enlightened course of action or point of view

get somewhere

: to be successful After a difficult start we're finally *getting somewhere*.

get there

: to be successful

get through

: to reach the end of : [complete](#) *got through* the ordeal unhurt

get to

1a : [begin](#) *gets to* worrying over nothing at all

b : to be ready to begin or deal with I'll *get to* the accounts as soon as I can

2 : to have an effect on: such as

a : [influence](#)

b : [bother](#) All these delays are starting to *get to* me.

get together

1 : to bring together : [accumulate](#)

2 : to come together : [assemble](#), [meet](#) often *gets together* with his friends after work

3 : to reach agreement were unable to *get together* on the new contract

get wind of

: to become aware of *got wind of* our plans for the party
get with it
: to become alert or aware : show sophisticated consciousness

get

[noun \(1\)](#)

\ 'get  \

Definition of *get* (Entry 2 of 3)

1a : something begotten:

(1) : [offspring](#)

(2) : the entire progeny of a male animal



b : [lineage](#)

2 : a return of a difficult shot in a game (such as tennis)

get

[noun \(2\)](#)

\ 'get  \

plural gittin\ gē-'tēn , 'gi-tin  \

Definition of *get* (Entry 3 of 3)

1 : a document of release from obligation in Jewish law specifically : a bill of divorce

2 : a religious divorce by Jewish law

 [Synonyms & Antonyms](#)  [How do you pronounce get?: Usage Guide](#)  [More Example Sentences](#)  [Learn More about *get*](#)

Keep scrolling for more

Synonyms & Antonyms for *get*

Synonyms: Verb

- [learn](#),
- [master](#),
- [pick up](#)

Synonyms: Noun (1)

- [fruit](#),
- [issue](#),

- [offspring](#),
- [posterity](#),
- [progeny](#),
- [seed](#),
- [spawn](#)

Antonyms: Verb

- [unlearn](#)

[Visit the Thesaurus for More](#) »



How do you pronounce get?: Usage Guide

Verb

The pronunciation \ˈgit\ has been noted as a feature of some British and American dialects since the 16th century. In the phonetic spelling of his own speech Benjamin Franklin records *git*. However, since at least 1687 some grammarians and teachers have disapproved this pronunciation. It nonetheless remains in widespread and unpredictable use in many dialects, often, but not exclusively, when *get* is a passive auxiliary (as in *get married*) or an imperative (as in *get up!*).

Examples of *get* in a Sentence

Verb He *got* a new bicycle for his birthday. I never did *get* an answer to my question.

See More  

First Known Use of *get*

Verb

13th century, in the meaning defined at [transitive sense 1a](#)

Noun (1)

14th century, in the meaning defined at [sense 1a](#)

Noun (2)

1843, in the meaning defined at [sense 1](#)

History and Etymology for *get*

Verb and Noun (1)

Middle English, from Old Norse *geta* to get, beget; akin to Old English *bigietan* to beget, Latin *prehendere* to seize, grasp, Greek *chandanein* to hold, contain

Noun (2)

Late Hebrew *gēṭ*

Keep scrolling for more

Learn More about *get*

Share *get*

[Post the Definition of get to Facebook](#)



[Share the Definition of get on Twitter](#)



Time Traveler for *get*



The first known use of *get* was in the 13th century

[See more words from the same century](#)

From the Editors at Merriam-Webster

[“Like a Pig in Mud” and Other...](#)

[“Like a Pig in Mud” and Other Barnyard Idioms](#)

[24 down-home turns of phrase](#)

[What's a 'Good Get'?](#)

[What's a 'Good Get'?](#)

[How to use 'get' as a noun](#)

Dictionary Entries near *get*

[gesture politics](#)

[gesundheit](#)

[geswarp](#)

[get](#)

[geta](#)

[get a bang out of](#)

[getable](#)

[See More Nearby Entries](#)

Phrases Related to *get*

[\(get\) ready, \(get\) set, go](#)

[a/the squeaky wheel gets the grease/oil](#)

[as good as it gets](#)

[attract/get someone's attention](#)

[be/get carried away](#)

[be/get in someone's face](#)

[be/get toggled up/out](#)

Statistics for *get*

Look-up Popularity

Top 1% of words

Cite this Entry

“Get.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/get>. Accessed 29 Oct. 2020.

Style: MLA

Keep scrolling for more

More Definitions for *get*

get

[verb](#)\ 'get  \

got\ 'gät \; got or gotten\ 'gä-t'n \; getting\ 'ge-tɪŋ \

Kids Definition of *get*

1 : to gain possession of (as by receiving, earning, buying, or winning) Everyone *gets* a present. I *got* new clothes.2 : to obtain by request or as a favor Did you *get* permission?3 : to come to have I *got* a good night's sleep.4 : [catch entry 1 sense 5](#) He *got* pneumonia.5 : [arrive sense 1](#) We *got* home early.6 : [go sense 1](#), [move](#) *Get* out! She *gets* about on crutches.7 : [become sense 1](#) Don't *get* angry. It's *getting* warmer.8 : to cause to be I *got* my feet wet.9 : [prepare sense 2](#) You relax while I *get* dinner.10 : [irritate sense 1](#) Don't let his teasing *get* to you.11 : [hit entry 1 sense 1](#) The snowball *got* him on the head.12 : to find out by calculation Did you *get* the answer yet?13 : to hear correctly Sorry, I didn't *get* your name.14 : [understand sense 1](#) Oh, now I *get* it.15 : [persuade](#) We *got* them to lower the price.

get ahead

: to achieve success (as in business)

get along

1 : to approach old age She's *getting along* in years.2 : to stay friendly The boys *got along* well.3 : to manage with little They *get along* on a small income.

get around

1 : to become known by many people The rumor quickly *got around*.2 : to avoid having to deal with He found a way to *get around* the rules.3 : to do or give attention to eventually I'll *get around* to it.

get at

1 : to reach with or as if with the hand I can't *get at* the switch.2 : to deal with There's lots to do so let's *get at* it.3 : to say or suggest in an indirect way Just what are you *getting at*?

get away

: to avoid being caught The robber *got away*.

get away with

: to not be punished for You won't *get away with* lying.

get back at

: to get revenge on I'll *get back at* him for what he did.

get by

1 : to manage with little We can *get by* with what we have.

2 : to do well enough to avoid failure I'm just *getting by* in this class.

get even

: to get revenge Are you going to forgive her, or *get even*?

get into

: to become deeply interested in She's really *gotten into* music.

get it

: to receive punishment You're going to *get it* when Mom gets home.

get off

1 : to start out on a journey They *got off* on their trip.

2 : to escape punishment or harm He *got off* with just a warning.

get on

1 : to approach old age My grandparents are *getting on*.

2 : to start or continue doing Come on, let's *get on* with it.

3 : to stay friendly The neighbors all *got on* fine.

get out

1 : [escape entry 1 sense 1](#) Everyone *got out* alive.

2 : to become known The secret *got out*.

get over

1 : to stop feeling unhappy about She's disappointed, but she'll *get over* it.

2 : to recover from I finally *got over* my cold.

get up

1 : to arise from bed

2 : [stand entry 1 sense 1](#)

3 : to find the ability I couldn't *get up* the nerve to speak.



get wind of

: to become aware of : hear about I *got wind of* their little scheme.

get

[transitive verb](#)

\ (') get  \

got \ (') gät  \; got or gotten \ ' gät-ən  \; getting

Medical Definition of *get*

: to catch or become affected by (a disease or bodily condition) *got* measles from his brother *got* her period

Keep scrolling for more

More from Merriam-Webster on *get*

Thesaurus: [All synonyms and antonyms for *get*](#)

Nglsh: [Translation of *get* for Spanish Speakers](#)

Britannica English: [Translation of *get* for Arabic Speakers](#)

Britannica.com: [Encyclopedia article about *get*](#)

Comments on *get*

What made you want to look up *get*? Please tell us where you read or heard it (including the quote, if possible).

[SHOW COMMENTS](#) 

WORD OF THE DAY

rue 

[See Definitions and Examples »](#)


Get Word of the Day daily email!

Your email address

SUBSCRIBE

Test Your Vocabulary

Here Be Dragons: A Creature Identification Quiz

- 
- Which is a synonym of **werewolf**?

•

lycanthrope

kitsune

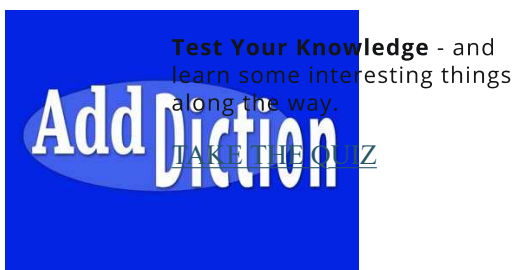
narcissist

pixiu

**SPELL
IT**

Can you spell these 10
commonly misspelled words?

[TAKE THE QUIZ](#)



Love words? Need even more definitions?

Subscribe to America's largest dictionary and get thousands more definitions and advanced search—ad free!

MERRIAM-WEBSTER UNABRIDGED

WORDS AT PLAY

•
11 Words Used by Edgar Allan Poe

The Vocabulary in the Rue Morgue

•
'Frankenstein' and 'Frankenfood': Creator or Creation?

Giving life to a new prefix

•
The History of 'Ballot'

Where your vote comes from ...

•
How to Use Word Division Dots and Syllable Hyphens

Dictionary secrets, revealed!

ASK THE EDITORS

'All Intensive Purposes' or 'All Intents and Purposes'?

We're intent on clearing it up

'Nip it in the butt' or 'Nip it in the bud'?

We're gonna stop you right there

Literally

How to use a word that (literally) drives some pe...

Is Singular 'They' a Better Choice?

The awkward case of 'his or her'

WORD GAMES

Here Be Dragons: A Creature Identification Quiz

Director's Cut!

TAKE THE QUIZ

Namesakes Word Quiz

When names become words and then we ask you about..

TAKE THE QUIZ

Spell It

Can you spell these 10 commonly misspelled wo...

TAKE THE QUIZ

Add Diction

Build a chain of words by adding one letter at a...

PLAY THE GAME

Learn a new word every day.
Delivered to your inbox!

Your email address

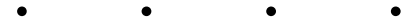
SUBSCRIBE >

OTHER MERRIAM-WEBSTER DICTIONARIES

- [LEARNER'S ESL DICTIONARY](#)
- [VISUAL DICTIONARY](#)
- [SCRABBLE® WORD FINDER](#)

- [MERRIAM-WEBSTER'S UNABRIDGED DICTIONARY](#)
- [BRITANNICA ENGLISH - ARABIC TRANSLATION](#)
- [ENGLISH - SPANISH-ENGLISH TRANSLATION](#)

FOLLOW US



Browse the Dictionary: [A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#)
[K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#) [U](#) [V](#) [W](#) [X](#) [Y](#) [Z](#) [0-9](#)

[Home](#) | [Help](#) | [Apps](#) | [About Us](#) | [Shop](#) |
[Advertising Info](#) | [Dictionary API](#) |
[Contact Us](#) | [Join MWU](#) | [Video](#) |
[Word of the Year](#) | [Puku](#) |
[Vocabulary Resources](#) | [Law Dictionary](#) |
[Medical Dictionary](#) | [Privacy Policy](#) |
[Terms of Use](#) | [Do Not Sell My Info](#)

[Browse the Thesaurus](#) |

[Browse the Medical Dictionary](#) | [Browse the Legal Dictionary](#)

© 2020 Merriam-Webster, Incorporated